IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.609 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. R.N. Shah, advocate for the petitioner.
Mr. V.C. Desai, advocate for the respondsents.

CORAM: Y.B. BHATT J.
Date of Decision: 05-12-1995

JUDGEMENT

1. The present revision is one under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act'), filed by the original tenant-defendant, wherein the respondents are the original plaintiffs-landlords.

2. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present

revision is one under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the context of the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

2.1 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

3. It may be noted here at this stage that the present revision raises a contention in respect of the concurrent findings of fact recorded against the defendant-tenant.

4. The landlords had filed the suit in the Rent Court against the detendant-tenant praying for a decree of eviction on the grounds, inter alia, of non-payment of arrears of rent for more than six months, that the tenant had acquired possession of a suitable residence after coming into operation of the Act, and that the defendant had ceased to use the suit premises continuously for a period of six months or more immediately prior to the filing of the suit.

5. The defendant had filed his written statement at Exh.9 and denied the averments made in the plaint on all the grounds. In the said written statement he had also raised a dispute as to standard rent payable.

6. The trial court raised issues at Exh.30, and after recording and appreciating the evidence on record, dismissed

the suit of the landlord so far as the ground of arrears of rent is concerned and also on the ground of the tenant acquiring possession of suitable residence. However, the trial court upheld the contention of the landlord and passed a decree on the ground that the tenant had ceased to use the suit premises for a continuous period of six months immediately prior to the suit.

7. Aggrieved by the decree of eviction passed against him the tenant preferred an appeal under section 29(1) of the said Act. It is pertinent to note that the landlords had not preferred any cross-objections and/or cross appeal from the said decree to the extent where a decree was refused on other grounds raised by the landlord.

8. The lower appellate court, after reappreciating the evidence on record, upheld the judgement and decree of the trial court by recording a concurrent finding of fact based on the appreciation of evidence on record to the effect that the tenant had ceased to use the premises continuously for a period of six months immediately prior to the filing of the suit.

9. It is under such circumstances that the tenant has filed the present revision, challenging the concurrent findings of fact recorded against him by the trial court and the appellate court.

10. Before dealing with the contentions raised by the learned counsel for the petitioner, I must keep in mind the relevant law on the subject as discussed by the Supreme Court in the case of Helper Girdharbhai (supra).

11. Learned counsel for the petitioner fairly conceded that on the facts and circumstances of the case, in order to succeed in the present revision, he would be required to establish that the impugned judgements and decrees are perverse, and/or suffer from non-application of mind, or constitute findings recorded on the basis of no evidence.

12. I may note here that the learned counsel for the petitioner has fairly conceded that the findings recorded in his favour, where the trial court has rejected the landlord's suit on the ground of the tenant having acquired possession of suitable premises after coming into operation of the said Act (in terms of section 13(1)(l) of the Act) may be a finding which cannot be sustainable on the basis of the facts on record, when examined with due regard to the case law on the subject. This issue, however, is not required to be considered in the present revision inasmuch as the finding recorded against the landlord by the trial court in respect of

this ground has not been challenged by way of cross-objections in the tenant's appeal, nor by way of an independent appeal by the landlords. It may also be noted that I have merely noted this concession on the part of the learned counsel for the petitioner-tenant not by way of a concession on any question of fact or law, but merely by way of casual noting, with a view to record the fairness of the learned counsel for the petitioner.

13. So far as the merits of the present revision are concerned, only one question arises for consideration. Both the courts below have recorded a concurrent finding of fact to the effect that the plaintiffs-landlords have established, by leading appropriate evidence on record, that the tenant has ceased to use the premises for a continuous period of six months immediately prior to the filing of the suit. Obviously and admittedly, this is a finding recorded by interpreting the appropriate evidence led by the respective parties. In order to succeed in the present revision, the petitioner-tenant must establish that the interpretation of the evidence on record was so grossly erroneous that the same would amount to a perversity in law, or that no reasonable person could have come to such conclusion of fact on a reasonable interpretation of such evidence.

14. In this context I do not propose to enter into a detailed discussion of the entire evidence on record and the interpretation by each of the courts below on each separate piece of evidence.

15. One of the main contentions raised by the learned counsel for the petitioner-tenant was that both the courts below have erred in adopting an incorrect perspective in the matter of appreciation of evidence, by appreciating such evidence both with a view to ascertain whether the landlord had made out a case under section 13(1)(k) and 13(1)(l) of the said Act. In other words, it was contended that the evidence must be separately read and separately considered inasmuch as the two grounds are separate and distinct and separate issues have been raised. It would appear to me that learned counsel for the petitioner is justified in raising such a contention. However, on the facts and in the circumstances of the case this contention would not advance his case any further for the simple reason that the evidence must necessarily be to some extent common and/or overlapping on these two issues. In fact it was the specific case of the landlords that the tenant had acquired possession of suitable accommodation elsewhere, and since he had shifted to such other accommodation, the tenanted premises were not used by him continuously for a period of six months immediately prior to the filing of the suit. Thus, these two grounds, on the facts and in the circumstances of

the case constitute what may be called the 'cause and effect'. Obviously, therefore, the evidence in respect of both these issues or both the contentions is common and cannot be expected to be separate and distinct. The fact that separate issues were raised in respect of these two grounds cannot be of any assistance to the petitioner-tenant since the courts below were in law bound to raise separate issues, particularly since these two grounds of eviction are available to the landlord under separate and distinct provisions of the statute viz. section 13(1)(k) and 13(1)(l) of the said Act. In this context all that is required to be noted is that when the totality of the evidence is being appreciated, in the context of the limited controversy in the present revision, only that evidence which is relevant and pertinent to the question under section 13(1)(k) should be considered.

16. Bearing in mind the aforesaid correct approach, I have reexamined the evidence on record, as pointed out by learned counsel for the petitioner. Suffice it to say that there is ample evidence on record to justify the finding of fact recorded by the two courts below in favour of the landlords. On a total consideration of such evidence and on a preponderance of probabilities, the courts below cannot be faulted for having arrived at the conclusion in fact derived by them. In this context it must also be borne in mind that it is not sufficient for the petitioner-tenant to merely plead or even to suggest that on a proper reappreciation of the evidence, another view may just be possible. It is for the petitioner to establish that the view taken by the courts below is a perversity in law. As aforesaid, I am satisfied that on the facts and circumstances of the case it cannot possibly be said that such appreciation on the part of the courts below suffers from a non-application of mind, or the same is the case of findings recorded on the basis of no evidence, or that such appreciation is so grossly unfair and/or unjust as to amount to a perversity in law.

17. However, with a view to satisfy the conscience of the court, I shall briefly discuss the relevant and salient features of the evidence on the basis of which the two courts below have recorded the relevant finding.

18. The relevant evidence establishes that the tenant had obtained possession of a suitable residence elsewhere (other than the tenanted premises) by constructing a bungalow in Eden Park Society, behind Railway Crossing, Maninagar, and that he had gone to reside there with his family, that this was more than six months prior to the filing of the suit and since he shifted to such bungalow, the tenanted premises have remained vacant. Both the courts below have found on the appreciation of the relevant evidence that such other residence viz.

bungalow in Eden Park Society has been acquired/constructed by the tenant as aforesaid. However, a decree on this ground under section 13(1)(l) has been refused simply on the ground that the name of the defendant tenant was used as a benamidar, and he was only the nominal owner of such bungalow, inasmuch as the real owner was the wife of the tenant who had actually paid for the property. It may be that the refusal of the decree on this ground has not been challenged, which does not necessarily follow that the same is in accordance with law. However, as aforesaid, this question is not being examined in the present revision. What is material for the purposes of the present discussion is that it is an admitted position that the said bungalow in Eden Park Society has been constructed with the funds of the wife of the tenant, and that the possession of the said bungalow has been taken by the wife and her children on a date which is more than six months prior to the date of the suit. Thus the only dispute raised by the tenant in this context is that although his wife and children went to reside in the newly constructed bungalow, he chose to stay behind in the rented premises for various reasons which he has sought to explain by way of his oral deposition.

19. It is in the context of this limited plea of the landlord that the question requires to be examined. Both the courts have found that it is not proved by appropriate evidence on the part of the tenant that he had in fact stayed behind in the rented premises although admittedly his wife and children had shifted to the newly constructed bungalow.

20. This finding is based on a number of factors arising from the evidence on record, which have been considered by the courts below both individually as well as cumulatively.

21. One of the explanations offered by the defendant-tenant for remaining behind in the tenanted premises is that the newly constructed bungalow in Eden Park Society is at a distance from his office whereas the tenanted premises are closer to his office. In this context the only explanation is that had he shifted to the newly constructed bungalow, it would take him nearly half an hour for reaching his office. There cannot be any doubt that this is a lame and loose excuse inasmuch as in a large city like Ahmedabad, a travelling time of half an hour between a residence and an office is not such a large time which would affect a decision or choice of residence, unless the tenanted premises are so close as to be almost adjacent to his office. However, on the facts of the case this is not so.

22. While appreciating the evidence on record, it must also be kept in mind that the defendant-tenant has admitted in his cross-examination that the newly constructed bungalow is

big enough to accommodate his entire family including himself.

23. Both the courts below have not accepted his lame version that the electric bill which was formerly Rs.8-10 per month had decreased to Rs.1.50 per month, since he was dining out and was not using the light. In this context it may also be noted that although it has not been explicitly brought on record, it could very well be that the amount of Rs.1.50p. per month constitute only the fixed charges or the meter rental, and the actual consumption might have been nil. The tenant's explanation that the consumption was so low on account of the fact that he used to dine at his brother's house in the evening after he returned late at night is not an explanation which can legitimately be accepted.

24. The defendant expected the courts to believe that he would not reside with his wife and children because the tenanted premises were closer to his office than the newly constructed bungalow, and also expected the courts to believe that he would dine at his brother's place rather than cook his own meals in the tenanted premises or go to his new bungalow and have the meals cooked by his wife for the entire family. In my opinion, the courts below have rightly refused to accept such lame and far-fetched explanations of the tenant.

25. It is also pertinent to note that the explanations given by the tenant for not going or moving into the newly constructed bungalow are distinct and quite different from the reasons given by the wife herself who has been examined at Exh.51. The wife of the tenant in her deposition has suggested that her husband stayed back in the tenanted premises since he was not keeping good health and the doctor had forbidden him to ride a cycle and it is for this reason that he did not shift to the newly constructed bungalow. It, therefore, becomes apparent that neither the tenant, nor his wife has stated the same reasons why the tenant had not moved into the newly constructed house with the entire family. This discrepancy between the versions of the husband and his wife are very significant.

26. Thus, it becomes obvious that once the explanations offered by the tenant for not moving into the newly constructed premises, are found to be unacceptable by the courts below, it necessarily follows that the entire family had moved into such newly constructed premises. Once this conclusion is justified, the courts below had no option but to record a finding that the tenant had ceased to use the tenanted premises on the construction of the new premises. From the other facts on record there is no dispute that possession of the newly constructed bungalow was in fact acquired by the wife and children of the tenant more than six

months prior to the suit. It is on the totality of such facts and circumstances as are found on the record of the case, that the two courts below have justified the landlords' case of non-user of the tenanted premises on the part of the tenant within the meaning of section 13(1)(k) of the said Act.

27. In the premises aforesaid, there is no cause for interference in the present revision which must, therefore, be rejected.

28. Accordingly the impugned judgements and decrees passed by the courts below are upheld and the present revision is dismissed. Rule is discharged with no order as to costs. Ad interim relief vacated.

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